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00-00814



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Charles L. Howorth, Jr.  
Regulatory Vice President

October 16, 2000

## VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Dear Mr. Waddell:

Please accept this letter in response to your letter of October 2, 2000. In this letter, BellSouth: explains its concerns that the same data apparently is not being sought regarding the special contracts and tariffed term plans of the CLECs (who have at least 25% of the business market in BellSouth's operating territory in Tennessee); briefly addresses the September 5, 2000 letter from Lexus of Nashville referenced in your letter; details the efforts BellSouth has taken to respond to these very broad data requests; and provides responses to these data requests.

**I. By apparently seeking information from BellSouth and BellSouth alone, the requests fail to obtain information affecting at least 25% of the business customers within BellSouth's operating territory in Tennessee.**

We were surprised to receive such broad and far-reaching requests concerning termination charges, especially in light of BellSouth's recent good-faith efforts to address apparent concerns regarding such charges. As you know, tariffs and CSAs BellSouth has filed recently contain termination charges which conform to the terms of the Proposed Settlement Agreement in the Show Cause Docket and/or the Proposed Regulations For the Provisioning of Tariff Term Plans and Special Contracts. To the best of our knowledge, no other entities have included such conforming provisions in any tariffs or special contracts they may have filed with the TRA.

We are also surprised that the requests apparently seek information regarding termination charges from BellSouth and BellSouth alone. As you know from the evidence developed in the Generic CSA Docket, CLECs have "full buyout" termination charges in some or all of their special contracts and/or tariffs, and the evidence in that Docket shows that "full buyout" termination charges have the same effect on a competitor's ability to win customers regardless of whether such charges are imposed by a CLEC or by an incumbent. Moreover, the Consumer Advocate Division has stated that it has the same concerns with the termination charges imposed by CLECs as it has with the termination charges imposed by incumbents, and the Staff Investigative Team agrees. In the "Collective Response" document it filed in Docket No. 00-

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00170 on June 27, 2000, for instance, the Staff Investigative Team states that the Proposed Settlement Agreement, which was designed to impose the same limitations on termination charges upon incumbents and CLECs alike,

not only promotes competition, it protects consumers and certainly is in the public interest. The Agreement should be approved for the following reasons: the terms of the Agreement are consistent with positions advocated by CLECs; approving the Agreement is the most expeditious manner for implementing pro-competitive termination provisions **to all consumers**; and the Agreement represents a reasonable surrogate for customer specific termination provisions.

See Collective Response at 8 (emphasis in original). Any concerns regarding termination charges, therefore, clearly apply across the industry, and any information that is sought regarding such charges should be sought from the entire industry.

This is especially true in light of the number of business customers that are being served by CLECs in the State of Tennessee. As you know, "[i]t is a matter of public record that as of June 30, 2000, BellSouth had . . . approximately 77% of the business access lines in its traditional Tennessee territory." See Concurring and Dissenting Opinion in Docket No. 00-00170 at 2.<sup>1</sup> Assuming, for the sake of argument, that the concerns regarding the effect termination charges could possibly have on competition are valid, the fact that CLECs have nearly 25% of the business customers in Tennessee means that nearly 25% of the business customers for which new entrants will compete could be "locked in" to "full buyout" termination charges. Denying new entrants the ability to compete for 25% of the market hardly seems consistent with a goal of "permitting competition in all telecommunications markets." See T.C.A. §65-4-123 (emphasis added). If, however, "full-buyout" termination charges really do deny competitors the ability to compete for customers, and if the termination charges being imposed by CLECs continue to be ignored, that is exactly what will happen -- new entrants will effectively be denied the ability to compete for 25% of the business market within BellSouth's territory.

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<sup>1</sup> Additionally, the number of customers CLECs are winning grows every day. In light of this growth, BellSouth believes that today it has much less than 77% of the business access lines in its traditional Tennessee territory.

None of this is to suggest that the concerns regarding the effect "full-buyout" termination charges might possibly have on competition are valid.<sup>2</sup> To the extent that such concerns exist, however, those clearly apply across the board to all telecommunications service providers. Any information that is gathered to address the validity of those concerns, therefore, should be gathered from all telecommunications service providers.

**II. The Lexus of Nashville letter, which addresses a tariffed term plan and not a CSA -- is moot because XO Communications has withdrawn the competitive offer the customer was considering and the customer has agreed to withdraw its informal complaint with the TRA.**

Although the September 5, 2000 letter from Lexus of Nashville ("Lexus") letter repeatedly refers to CSAs, Lexus of Nashville has never entered into a CSA with BellSouth. Instead, Lexus entered into a tariffed term agreement as specified in BellSouth's General Subscriber Services Tariff.<sup>3</sup> Lexus had been enjoying the benefits of the lower rates under this tariffed term plan for more than two years when it received an offer for services from NEXTLINK. Significantly, the NEXTLINK offer quoted rates for month-to-month service as well as rates for a one-year, two-year, and three-year term commitment. Lexus indicated to BellSouth that it was considering signing a three-year term commitment with NEXTLINK and asked about the termination charge that would apply if it terminated its tariffed term plan with BellSouth. BellSouth advised Lexus that the tariffed termination charge would be \$19,627.

Lexus then filed its letter with the TRA which, as noted before, erroneously characterizes the tariffed term plan Lexus signed as a CSA.<sup>4</sup> Shortly after the letter was filed, NEXTLINK announced that it would begin operating as XO Communications, Inc. Lexus has advised BellSouth that XO then sent a letter withdrawing the NEXTLINK offer that Lexus had been considering. Lexus has indicated to BellSouth that it is no longer interested in terminating the tariffed term plan -- in fact, Lexus has signed agreements with BellSouth for expanded service. Lexus also has advised BellSouth that it intends to withdraw the informal complaint letter it filed with the TRA.

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<sup>2</sup> BellSouth has consistently stated its belief that such concerns are not valid, and the fact that CLECs in Tennessee have won nearly 25% of the customers who were feared to have possibly been insulated from competition by "full-buyout" termination charges bears this out.

<sup>3</sup> In light of the CPNI provisions of 47 U.S.C. §222, BellSouth has not specified the specific tariff section that applies to the services Lexus has ordered.

<sup>4</sup> It is surprising that this customer -- whose letter suggests a rather detailed knowledge of termination charges, the rulemaking proceedings, and CSAs in general -- mistakenly referred to its tariffed term plan as a CSA.

**III. BellSouth has made good-faith efforts to gather information responsive to the very broad data requests that were served upon it.**

The scope of the information requested of BellSouth is very broad. The requests, for example, seek information regarding CSAs and tariffed term plans from more than five years in the past through today. With regard to both CSAs and tariffed term plans, the requests seek the number of times BellSouth has assessed termination charges; the number of times BellSouth has assessed termination charges lower than those provided in the CSA or tariff; the number of times BellSouth has waived assessment of termination charges; the number of times customers have contacted BellSouth for the purpose of terminating service provided under a CSA or tariff; and the number of times a customer has approached BellSouth concerning the application of a termination charge. In some instances, the requests also seek the CSA number or tariff reference, the amount of charges involved, and the reason the customer gave for wanting to terminate service.

Some of the requested information simply is not maintained by BellSouth in the ordinary course of business. Other information is stored on electronic images of past bills, but BellSouth has no existing program that would allow it to extract such information from the literally millions of pages of customer bills that are stored in this format. Additionally, many of the persons at BellSouth who may have had personal knowledge of responsive information are no longer employed by BellSouth. Gathering the information necessary to respond to the requests, therefore, has been a difficult, labor-intensive, and time-consuming task.

In a good-faith effort to respond, however, BellSouth has contacted its employees who have responsibility for business accounts in Tennessee and has asked these employees to provide information they may have that is responsive to these requests. BellSouth has collected the information these employees have provided, and this information is presented below. BellSouth respectfully objects to the requests set forth in your letter to the extent that they seek to impose more onerous duties upon BellSouth.

**IV. Responses to Data Requests**

Subject to the discussion in Section II above, BellSouth respectfully submits the following information in response to your letter.

- 1. How many times since July 1, 1995 has BellSouth assessed a termination liability charge to a customer in the state of Tennessee served under a CSA approved by the Tennessee Regulatory Authority or Public Service Commission? For each instance, please provide the following information:**

**CSA Number, amount of the termination charge assessed, and the reason the customer gave for terminating the CSA.**

BellSouth is aware of one situation in which a Tennessee customer terminated its CSA and was assessed termination charges of \$23,900 on one account and \$11,950 on another account. BellSouth assessed termination liability pursuant to the CSA, and the customer challenged the assessment on the grounds of various alleged service-related problems. BellSouth's investigation of the situation revealed some such problems, and BellSouth therefore credited the customer's accounts in the amount of the termination charges that had been assessed.

Other than this situation, to the best of BellSouth's knowledge, no CSA customer in the State of Tennessee has terminated its CSA, and BellSouth is unaware of having assessed a termination charge to a CSA customer in the State of Tennessee.

2. **How many times since July 1, 1995 has BellSouth assessed a contract termination liability charge to a customer in the state of Tennessee served under a CSA approved by the Tennessee Regulatory Authority or Public Service Commission that were lower than those called for in the CSA? For each instance, please provide the following information: CSA Number, amount of the termination charge assessed, and the reason the customer gave for terminating the CSA.**

With the exception of the situation addressed in response to Item No. 1 above, to the best of BellSouth's knowledge, no CSA customer in the State of Tennessee has terminated its CSA, and BellSouth is unaware of having assessed a termination charge to a CSA customer in the State of Tennessee.

3. **How many times since July 1, 1995 has BellSouth released a customer in the state of Tennessee served from a CSA approved by the Tennessee Regulatory Authority or Public Service Commission without assessing a termination liability charge. For each instance, please provide the following information: CSA Number, amount of the termination charge waived, and the reason the customer gave for terminating the CSA.**

When the term of a CSA expires, the customer is, in a sense, released from the CSA without having to pay termination charges. Additionally, some CSAs may permit the customer to upgrade services without incurring termination charges. BellSouth assumes that this request is not directed toward those situations.

Having said that, with the exception of the situation addressed in response to Item No. 1 above, to the best of BellSouth's knowledge, no CSA customer in the State of Tennessee has terminated its CSA, and BellSouth is unaware of having assessed a termination charge to a CSA customer in the State of Tennessee.

4. **How many times since July 1, 1995 has BellSouth been contacted by a customer located in state of Tennessee served under a CSA approved by the Tennessee Regulatory Authority or Public Service Commission for the purpose of terminating services provided under the CSA? For each instance, please describe in detail what BellSouth told the customer.**

BellSouth is aware of one CSA customer in Tennessee having asked BellSouth to provide the amount of termination charges that would apply if that customer terminated service under its CSA. BellSouth informed the customer that the amount would be \$40,000.00.

5. **How many times since July 1, 1995 has BellSouth been approached by a customer served under a CSA approved by the Tennessee Regulatory Authority or Public Service Commission in the state of Tennessee concerning the application of a contract termination liability charge. For each instance, please describe in detail what BellSouth told the customer.**

BellSouth is unaware of any such instances other than the one discussed in response to Item No. 4 above.

6. **How many times since July 1, 1995 has BellSouth assessed a tariff termination liability charge to a customer in the state of Tennessee served under a tariff term plan approved by the Tennessee Regulatory Authority or Public Service Commission? For each instance, please provide the following information: A reference to the applicable tariff termination provision, amount of the termination charge assessed, and the reason the customer gave for terminating service.**

BellSouth is aware of the following instances in which it has assessed a tariffed termination charge to a customer in the State of Tennessee:

B7.1.2.C	\$10,600.00	Customer going out of business and closing all locations.
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A40.10.2	\$1,706.00	Customer no longer needed the service
A40.10.2	\$10,920.00	Customer went to another service provider
A40.10.2	\$594.00	Customer no longer needed the service
A40.10.2	\$1,158.00	Customer no longer needed the service
A40.10.2	\$5,500.00	Customer migrated to another service
B7.2.2	\$760.00	Customer no longer needed the service
A42.3.2	\$34,135.00	Customer going out of business and closing all locations.
A42.3.2	\$32,876.00	Customer went to another service provider
A42.3.2	\$97,266.45	Customer failed to pay its bills
A42.3.2	\$45,772.65	Customer failed to pay its bills
A42.3.2	\$111,273.50	Customer failed to pay its bills
A42.3.2	\$30,708.00	Customer went to another service provider
A42.3.2	\$10,541.80	Customer went to another service provider
A42.3.2	\$51,493.80	Customer failed to pay its bills
A42.3.2	\$1,535.62	Unknown
A20.3.8	\$26,700.00	Customer went to another service provider

7. **How many times since July 1, 1995 has BellSouth assessed a tariff termination liability charge to a customer in the state of Tennessee served from a tariff term plan approved by the Tennessee Regulatory Authority or Public Service Commission that were lower than those called for in the tariff? For each instance, please provide the following information: A reference to the applicable tariff termination provision, amount of the**

**termination charge waived, and the reason the customer gave for terminating service.**

Except for the instances discussed in response to Item No. 8 below, BellSouth is unaware of having assessed a termination charge, including a termination charge lower than the charge called for in the applicable tariff, to a CSA customer in the State of Tennessee.

8. **How many times since July 1, 1995 has BellSouth released a customer in the state of Tennessee served under a tariff term plan approved by the Tennessee Regulatory Authority or Public Service Commission without assessing a tariff termination liability charge. For each instance, please provide the following information: A reference to the applicable tariff termination provision, amount of the termination charge assessed, and the reason the customer gave for terminating service.**

When the term of a tariffed term plan expires, the customer is, in a sense, released from the plan without having to pay termination charges. Additionally, some tariffed term plans permit the customer to upgrade services without incurring termination charges. BellSouth assumes that this request is not directed toward those situations. Having said that, BellSouth is aware of the following instances in which a customer was ultimately released from a tariffed term plan without being assessed termination charges.

A customer filed a lawsuit against BellSouth, claiming that the employee who signed two tariffed term contracts on behalf of the customer had no authority to sign the contracts. In a good-faith offer to settle the pending litigation, BellSouth offered the customer the same services under CSAs with termination charges consistent with those set forth in the Proposed Settlement Agreement submitted in the Show Cause Docket. The customer is considering the offer at this time. The termination charge for one contract would be \$70,121.25, and the termination charge for the other contract would have been \$71,679.50. *See* Tariff Section A42.3.2.

A customer who was many months in arrears in paying its bill hired an attorney, alleged various problems with its service, terminated its service, and obtained similar service from a competitor. BellSouth is in the process of considering the customer's allegations and is deciding how to proceed with this matter.

The Lexus of Nashville matter is discussed above in Section II.



Customer wanted to terminate its contract and BellSouth could not find a copy of the customer's signed Letter of Election in its files. The termination charge would have been \$1,272 pursuant to tariff section B7.1.

The customer was moving its location from Tennessee to Kentucky. The customer signed a term contract for the same service at its new location in Kentucky, and BellSouth did not charge termination charges for the service at the Tennessee location. The termination charge would have been \$22,500 pursuant to tariff section A42.3.2.

9. **How many times since July 1, 1995 has BellSouth been contacted by a customer located in state of Tennessee served under a tariff term plan approved by the Tennessee Regulatory Authority or Public Service Commission for the purpose of terminating services provided under the tariff? For each instance, please describe in detail what BellSouth told the customer.**

A customer asked for the termination charges that would apply if it disconnected its Smartpath service. BellSouth advised the customer that the amount of the termination charge would be \$265 pursuant to tariff section B7.8.E.

A customer asked for the termination charges that would apply if it disconnected its PRI and Smartpath service. BellSouth advised the customer that the amount of the termination charge would be \$62,976 for the PRI and \$792 for the Smartpath. *See* Tariff Sections A42.3.2; B7.8.E.

A customer asked for the termination charges that would apply if it disconnected its PRI service. BellSouth advised the customer that the amount of the termination charge would be \$80,000.00. *See* Tariff Section A42.3.2.

A customer asked for the termination charges that would apply if it terminated its ESSX service. BellSouth advised the customer that the amount of the termination charge would be as stated in its tariffed term contract. *See* Tariff Section A.112.

A customer asked for the termination charges that would apply if it terminated its Frame Relay service. BellSouth advised the customer that the amount of the termination charge would be as stated in its tariffed term contract. *See* Tariff Section A40.10.2.

A customer asked for the termination charges that would apply if it disconnected its Smartpath service. BellSouth advised the customer that the amount of the termination charge would be \$3,818.00. *See* Tariff Section B7.8.E.

10. **How many times during the past 5 years has BellSouth been approached by a customer served under a tariff term plan approved by the Tennessee Regulatory Authority or Public Service Commission in the state of Tennessee concerning the application of tariff termination liability charges. For each instance, please describe in detail what BellSouth told the customer.**

A customer asked BellSouth whether a termination charge would apply if the customer disconnected or moved its Frame Relay services. BellSouth advised the customer that disconnecting the service would result in termination charges under the applicable tariff. *See* Tariff Section A40.10.2. BellSouth also advised the customer that it could move Frame Relay services without a termination liability charge subject to the conditions specified in the tariff. *See* Tariff Section A40.10.2.

A customer asked for the amount of termination charges that would apply if it disconnected its PRI service. BellSouth advised the customer that the termination charges would equal the contract charges for the number of months remaining in the contract. In response to a follow-up question by the customer, BellSouth advised the customer that if the circuit remained active until the contract expired, the customer would incur no termination charges. *See* Tariff Section A42.3.2.

A customer asked for the amount of termination charges that would apply if it disconnected its PRI service. BellSouth advised the customer that the termination charges would equal the contract charges for the number of months remaining in the contract. *See* Tariff Section A42.3.2.

A customer asked for the amount of termination charges that would apply if it disconnected its Frame Relay service. BellSouth advised the customer that the termination charges would be as stated in the contract. *See* Tariff Section A40.10.2.

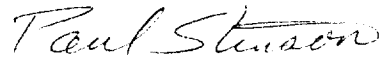
A customer asked for the amount of termination charges that would apply if it disconnected its Frame Relay service. BellSouth advised the customer that the termination charges would be as stated in the contract. *See* Tariff Section A40.10.2.

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A customer asked for the amount of termination charges that would apply if it disconnected its PRI service. BellSouth advised the customer that the termination charges applied only to those items under the term payment and would be equal to the contract charges for the number of months remaining in the contract. *See* Tariff Section A42.3.2.

A customer asked for the amount of termination charges that would apply if it disconnected its PRI service. BellSouth advised the customer that the termination charges applied only to those items under the term payment and would be equal to the contract charges for the number of months remaining in the contract. *See* A42.3.2.

Sincerely yours,



Charles L. Howorth

